

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

UNITED STATES OF AMERICA)
)
)
v.) **No. 3:05cr0018 AS**
)
CARL A. MUFFLEY)

MEMORANDUM AND ORDER

The court takes full judicial notice of the record in this case. The Report and Recommendation relates to a pro se motion to withdraw his guilty plea filed by the defendant Carl A. Muffley on or about October 21, 2005. The United States of America filed a motion to strike the aforesaid pro se filing on or about November 1, 2005. On November 4, 2005, the matter was referred to Magistrate Judge Nuechterlein for a Report and Recommendation that has now been filed. The magistrate judge held a proceeding on November 28, 2005 to determine whether this defendant, Carl A. Muffley, intended to proceed pro se or whether he intended to proceed with retained counsel. This defendant was placed under oath and asked the appropriate questions. In response, the defendant clearly and unequivocally expressed his desire to continue with his retained counsel and not to proceed pro se. *See Faretta v. California*, 422 U.S. 806 (1975). According to the magistrate judge, his retained counsel, a very experienced lawyer in these kinds of cases, also indicated that Mr. Muffley did not desire to terminate the attorney-client relationship. Following *Faretta*, the law in this circuit does not encourage or permit under the circumstances of this case so-called hybrid representation.

The record does not disclose any objections filed to the aforesaid Report and Recommendation which was filed by the magistrate judge on November 29, 2005. The same is now **APPROVED**. On that basis, sentencing will go forward on this case on January 6, 2006 at 2:30 p.m. (local time).. **SO ORDERED.**

DATED: January 4, 2006

S/ ALLEN SHARP
ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT

cc: The Honorable Christopher A. Nuechterlein